MDR Tracking Number: M5-04-1661-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution - General and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. The dispute was received on 02-09-04. .

The Medical Review Division has reviewed the IRO decision and determined that **the requestor prevailed** on the majority of the issues of medical necessity. Therefore, upon receipt of this Order and in accordance with §133.308(r)(9), the Commission hereby orders the respondent and non-prevailing party to **refund the requestor $460** for the paid IRO fee. For the purposes of determining compliance with the order, the Commission will add 20 days to the date the order was deemed received as outlined on page one of this order.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

Based on review of the disputed issues within the request, the Medical Review Division has determined that **medical necessity was the only issue** to be resolved. The office visits, muscle test, range of motion, electrical stimulation, physical medicine treatment, physical performance test, joint mobilization, myofascial release, ultrasound therapy, and kinetic activities from 2/10/03 through 4/10/03 and the therapeutic procedures from 2/10/03 through 2/16/03 **were found** to be medically necessary. The unlisted procedures from 2/10/03 through 4/10/03 and all services after 4/10/03 **were not found** to be medically necessary. The respondent raised no other reasons for denying reimbursement for the above listed services.

This Findings and Decision is hereby issued this 17th day of May 2004.

Regina L. Cleave
Medical Dispute Resolution Officer
Medical Review Division

On this basis, and pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay the unpaid medical fees in accordance with the fair and reasonable rate as set forth in Commission Rule 133.1(a)(8) plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this order. This Order is applicable to dates of service 2/10/03 through 4/10/03 in this dispute.

The respondent is prohibited from asserting additional denial reasons relative to this Decision upon issuing payment to the requestor in accordance with this Order (Rule 133.307(j)(2)).

This Order is hereby issued this 17th day of May 2004.

Roy Lewis, Supervisor
Medical Dispute Resolution
Medical Review Division

RL/rlc

NOTICE OF INDEPENDENT REVIEW DECISION

Date: April 6, 2004

MDR Tracking #: M5-04-1661-01
IRO Certificate #: 5242

___ has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced case to ___ for independent review in accordance with TWCC Rule §133.308 which allows for medical dispute resolution by an IRO.

___ has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, relevant medical records, any documents utilized by the parties referenced above in making the adverse determination and any documentation and written information submitted in support of the appeal was reviewed.

The independent review was performed by a Chiropractic reviewer who has an ADL certification. The reviewer has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for a determination prior to the referral to for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to this case.

Clinical History

The claimant apparently received injury to her left shoulder region as she was performing occupational duties for her employer on ___. The said injury occurred due to overhead repetitive movements, initially treated by ___, on 10/18/01, who diagnosed impingement syndrome of the left shoulder and performed a "Lidocaine" injection.

The claimant improved with the injection and was given MMI and a 0% impairment rating on 10/26/01. Apparently, the claimant reported pain returning a couple of months later, after the medication wore off. Even though being returned to work with restrictions, repetitive side-to-side motions continued and it appears the initial problem, had never really healed. In 11/02, the claimant is reported to have re-exacerbation in the condition, in which she again sought treatment with ___.

She apparently continued to have pain in the left shoulder region, which worsened to the point that, another injection was performed on 1/22/03, by ___, which resulted in a 60% relief effect.

An MRI was performed to the left shoulder on 2/06/03, which demonstrated tendonopathy of the supraspinatus tendon and a partial tear could not be ruled out. There was also a possible SLAP tear.

The claimant apparently changed treating doctors and began chiropractic conservative care on 2/10/03, with ___. The claimant, apparently, did not respond to the conservative care treatment to prevent surgery, although, range of motion deficits appeared to be improved, but were not able to be maintained.

The claimant eventually received surgery to left shoulder region and was given MMI on 10/12/03 with an impairment rating (IR) of 13%.

Requested Service(s)

The medical necessity of the outpatient services to include new office visit/other outpatient, muscle test, range of motion, electrical stimulation, physical medical treatment, physical performance, therapeutic procedure, established office visit/other, joint mobilization, myofascial release, physical treatment 1 AR unlisted procedure, ultrasound therapy, kinetic activities.

Decision

I disagree with the insurance carrier and find that the above treatment was medically reasonable and necessary through 4/10/03; with the exclusion of code 97110 after the initial first week of the trial period. Beyond this point (4/10/03), the claimant would be considered a possible surgical candidate and could have maintained a home exercise program (HEP), while surgery was being contemplated and scheduled (see rationale for decision regarding code 97110 below).

I agree with the insurance carrier that code 97110 was not medically necessary after the first week of treatment and code 97139-ME, lacking documentation for rationale of use.

Rationale/Basis for Decision

It appears that the basis of this case is centered on the issue of whether or not this treatment is related to the incident on ___. After a very through review of the documentation and the many secondary physician opinions concerning the injury in specific, it is my educated opinion and in a high degree of medical probability that the ___ incident was indeed the causative factor, which was not fully resolved, that lead to these treatment recommendations on 2/10/03.

I state this for several reasons concerning inconsistencies in this case. It does not appear appropriate for the original treating doctor, ___ to have diagnosed impingement syndrome and applied an injection only. Recommended treatment parameters would definitely consider, at the very least, a short course of physical therapy to monitor claimant response and recovery. However, this was not performed and at that point, no conservative care measures were ever implemented.

One must also take into consideration, that this was diagnosed with possible severity beyond a strain sprain. Secondly, to base MMI in only 2 weeks of an impingement syndrome diagnosis, following injection, with only decreased pain as its evidence, is not justified due to obvious pain medicated responses. As reported on numerous physician reports, the claimant stated the effects lasted approximately 2 months, however once the medication wore off, pain again was present. It would also be fair to say that further injury could have occurred while the claimant had a decreased pain response, through injection, but was required to continue the same movements that apparently, caused the injury in the first place, where as physical therapy could be monitored and be safely implemented.

It does appear that the claimant did continue to complain of subjective pain response during the 1 year process following this MMI determination on 10/26/01, with a definite re-exacerbation event on 11/14/02 per physician report by ___ dated 1/22/03. Given these facts, it would appear that the condition was not resolved throughout the 1 year lapse of treatment. This being the case, it would necessitate the treatment plan for chiropractic conservative care beginning on 2/10/03, as reasonable and necessary. No physical therapy was ever prescribed for this claimant prior to this date, which would be the conservative therapy of choice and would be supported by the TWCC Extremity Treatment Guideline, used as a reference. This is further supported by several different areas of opinion by physicians who actually examined the claimant and a designated doctor exam which ultimately holds more weight for unbiased reporting.

It is also apparent that this treatment was necessary for pre-surgical screening measures with possible prevention outcomes. Logically, this was a necessary step in the recovery process of this claimant, in the fact that, the claimant is entitled to appropriate healthcare and all reasonable conservative care measures should be exhausted before any possible surgical intervention.

The treating doctor, ___ makes a good case for the use of conservative treatment, even though surgery still was required. The attempt to decreased injury effects and increase range of motion (ROM) is an integral part of pre-surgical treatment parameters and is supported by pre-surgical guidelines.

Documented improvement was apparent in both ROM and pain sensation, although the amount of prescribed conservative treatment could be questioned. Furthermore, the increased ROM documented by the treating doctor at the conclusion of the 8 week period, was not demonstrated, approximately only 4 weeks later by ___ on direct measurement recordings, in some motions, less than half of previous recordings (see response for decision below).

Overall, it does appear that the claimant did not receive reasonable and necessary conservative care early on for this diagnosis, according to the stated TWCC Extremity Treatment Guidelines[1], used as a reference.

[1] Even though the TWCC Spine & Extremity Treatment Guideline has been abolished, it still remains a reliable reference source to provide guidance, regarding the necessity of treatment.

It was not apparent that this claimant did not want to return to work (RTW), due to this injury, in terms of malingering and in the final analysis, surgery did support the claimant's early subjective responses.

Adhesive capsulitis was apparent on examination by ___ and verified by other examining physicians, which would signify a progressive problem, that was not present on initial injury examination by ___. This, in itself, helps to support the connection of the original injury to the referenced necessity for treatment on 2/10/03.

This decision, for the treating doctor, is not made lightly and not without weighing the evidence on both sides. Many times treatment, especially this late date, is not reasonable or necessary and documentation usually does not support its use. (However, in this case, without the use of conservative care early on, concerning the diagnosis made and in light of continued subjective complaints, this claimant did require at the least an attempt at conservative care before any recommended surgical event.)

Other reasons for treating doctor support are as follows;

- Follow up report by ___ dated 1/22/03, documents subacromial lidocaine test results in 60% relief, border-lining whether or not rotator cuff involvement is present.
- MRI cannot definitely rule out the presence of a tear.
- Designated doctor report dated 3/27/03 certifies MMI has not been reached, with good rationale and in light of frozen shoulder indications.
- RME report by ___ resulted in diagnosis of original impingement syndrome progressed to possible rotator cuff tear and the points made in this report appeared to be a reasonable assessment.
- The claimant would be entitled to a trial period of chiropractic conservative care, per TWCC Extremity Treatment Guideline[2], especially since it appears complaints had continued since date of injury (DOI) and adhesive capsulitis was established.

Response for Decision; regarding the exclusion of code 97110:

Based on supplemental documentation by the URA concerning one-on-one treatment and lack of rationale for its involved use in the treating doctor's daily notes, it is reasonable to assume that this code has been utilized excessively. During the initial stage of its use, up to 1-2-weeks to learn and monitor the exercises should be sufficient for this region of injury. It does appear this claimant could have reasonably attained the same results through group procedures, especially after review of the exercises performed. I did not find any changes whatsoever, in the prescribed exercises or routine(s) (or in fact, any exercises that would require this amount of one-on-one units) throughout the dates of service (DOS) in question, which remained repetitious and it appeared the claimant's progress plateaued at 4/03.

[2] Even though the TWCC Spine & Extremity Treatment Guideline has been abolished, it still remains a reliable reference source to provide guidance, regarding the necessity of treatment.

Another reason for this decision is that ROM discrepancies were apparent with drastically decreased ROM by ___ on 6/12/03, in comparison to the treating doctor's measurements, approximately 3-4 weeks earlier. I would find it difficult to believe that the ROM loss, 3-4 weeks post treatment, would decrease by that amount, especially since the claimant was not working and was supposedly continuing an HEP, in addition to medication usage.